

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

VINCENT JOHNSON,

Petitioner,

v.

**WARDEN, CHILLICOTHE
CORRECTIONAL INSTITUTION,**

Respondent.

CASE NO. 2:15-CV-00971

JUDGE JAMES L. GRAHAM

Magistrate Judge Elizabeth A. Preston Deavers

OPINION AND ORDER

On September 26, 2016, the Court denied Petitioner's request for a certificate of appealability. (ECF No. 22.) Petitioner has filed a *Motion for Leave to Appeal in forma pauperis*. (ECF No. 23.)

Pursuant to 28 U.S.C. § 1915(a) (3), an appeal may not be taken *in forma pauperis* if the appeal is not taken in good faith. Federal Rule of Appellate Procedure 24(a)(3)(A) provides:

A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court-before or after the notice of appeal is filed-certifies that the appeal is not taken in good faith[.]

Id. "The good faith standard is an objective one." *Ervin v. Hammond*, No. 2013 WL 1103774, at *3 (W.D. Tenn. 2013)(citing *Coppedge v. United States*, 369 U.S. 438, 445 (1962)). In order to meet the good faith standard, the appeal cannot be frivolous. *Hence v. Smith*, 49 F.Supp.2d 547, 549 (E.D. Mich. 1999)(citing *Coppedge*, at 445-46). "Accordingly, it would be inconsistent

for a district court to determine that a complaint is too frivolous to be served, yet has sufficient merit to support an appeal *in forma pauperis*.” *Frazier v. Hesson*, 40 F.Supp.2d 957, 967 (W.D. Tenn. March 30, 1999)(citing *Williams v. Kullman*, 722 F.2d 1048, 1050 n. 1 (2d Cir. 1983)).

“The standard governing the issuance of a certificate of appealability is more demanding than the standard for determining whether an appeal is in good faith.” *U.S. v. Cahill–Masching*, 2002 WL 15701, * 3 (N.D.Ill. Jan.4, 2002). “[T]o determine that an appeal is in good faith, a court need only find that a reasonable person could suppose that the appeal has some merit.” *Walker v. O’Brien*, 216 F.3d 626, 631 (7th Cir. 2000).

Penny v. Booker, No. 05–70147, 2006 WL 2008523, at *1 (E.D. Mich. July 17, 2006).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that the appeal is not in good faith.

Petitioner’s *Motion for Leave to Appeal in forma pauperis*, (ECF No. 23), therefore is **DENIED**.

IT IS SO ORDERED.

Date: October 19, 2016

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge